CASE NO. CA-2024-002784

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE FAMILY DIVISION
MR JUSTICE WILLIAMS **FD23P00425**

In the matter of THE SHARIF CHILDREN

BETWEEN:

(1) LOUISE TICKLE & (2) HANNAH SUMMERS

Appellants

-and-

(1) THE BBC, (2) PA MEDIA (3) ASSOCIATED NEWSPAPERS LIMITED, (4) TIMES MEDIA LIMITED, (5) GUARDIAN NEWS AND MEDIA LIMITED, (6) TELEGRAPH MEDIA GROUP HOLDINGS LIMITED, (7) NEW GROUP NEWSPAPERS LIMITED, (8) INDEPENDENT TELEVISION NEWS LIMITED and (9) REACH PLC
(10) SURREY COUNTY COUNCIL
(11) OLGA SHARIF
(12) URFAN SHARIF
(13) BEINASH BATOOL
(14 – 19) U, V, W, X, Y and Z (CHILDREN)
(by their Children's Guardian, [redacted])

Respondents

SKELETON ARGUMENT ON BEHALF OF 12TH RESPONDENT FATHER, URFAN SHARIF, FOR APPEAL HEARING ON 14 AND 15 JANUARY 2025

Introduction

1. This skeleton argument is filed on behalf of the 12th respondent father, Mr Urfan Sharif; the authors of this document act *pro bono*.

2. Mr Sharif's position in respect of disclosure to the press, and subsequently, issues of publication, has been as follows:

    a. In respect of disclosure, Mr Sharif did not oppose disclosure of the historic material to the press, so that they would have the full picture as to the context and background to the case, in order to avoid any selective or irresponsible reporting.

b. In respect of publication, he opposed publication of the details from the historic proceedings as much as possible, on the basis of the need to preserve the remaining privacy of the children and the need to avoid potential re-traumatisation of the children through publication of their background. In the position statement for the hearing before Williams J listed on 9 December 2024 on his behalf we also "*question[ed] the appropriateness of publishing non party names including professionals from the material without notifying them in advance and giving them an opportunity to making representations about the same prior to the court determining whether their names should be published*".

3. Upon this appeal, Mr Sharif endorses the reasoning and conclusions of Williams J in declining to grant permission to the press to publish the names of the historic judges, and in particular **CJ/3** who sanctioned the child arrangements for Sara and who is the main focus of any proposed publication, without first giving those judges an opportunity to make representations and/or to be represented. Mr Sharif is concerned that no harm should come to the judge(s) who presided in the historic proceedings.

<u>The decision under appeal – the judgment of Williams J</u>

4. The order under appeal is the subsection of the Reporting Restriction Order which restrains publication of the names of the judge(s) who presided over the historic proceedings in respect of Sara Sharif.

5. In making this order, Williams J set out as follows:

> "*I would not name any of those involved without enquiries being made of them as to their health and their response to the possibility of being named*" [§91] … "*I will list the matter for further consideration in 3 months' time when those who might be identified can be notified and given the opportunity if they wish to make representations and I can receive evidence about the intensity of the reactions that have been generated*." [§92]

6. His decision amounts to an interim determination to 'hold the ring' in respect of naming third parties, including judges, to allow for further consideration once the relevant individuals have been approached to ascertain their positions and to confirm whether there are any additional individual specific matters which might bear upon the ultimate balancing exercise. Williams J was mindful that once the genie of publication is released from the bottle it cannot be coaxed back inside, and concluded that any delay in the determination of the issue will cause minimal prejudice in the context of a matter of weeks and holding the ring requires non-publication rather than publication [§6(iii)].

7. The key reasoning of Williams J was as follows:

    a. The applicable legal framework when considering the naming of third parties, including the judges, is the *Re S* balancing exercise, which considers the proportionality of restricting Article 10 (freedom of expression) against the rights protected under Article 8 (privacy and safety). Each decision must be case-specific and engages the Court's discretion; there is no rule that judges must *always* be named or presumption that Art 10 rights take precedence.

    b. He was required to conduct the *Re S* balancing exercise on the information available to the Court at this juncture. In doing so, the Court may assess the risk of harm to individual judges based on both specific evidence, but also inference and risk assessment drawn from experience. He noted the decision of the Court of Appeal in *Abassi v Newcastle upon Tyne Hospitals NHS Foundation Trust* [2023] EWCA Civ 331 in which it was held that generic concerns about the impact on individuals arising from the 'firestorm' associated with end-of-life cases were relevant to the balancing exercise [§28]. The Court weighed into its decision its general knowledge of the potential for publicity to have profound implications on the health and wellbeing of individuals involved (e.g. the justices in the *Marsden* case). He took into account that (a) this is an exceptional case which will attract an exceptional level of attention, (b) there are particular modern risks associated with releasing names of individuals, particularly through online platforms where individuals could face harassment or threats (e.g. HHJ Simon Oliver and HHJ

Carol Atkinson[1]), and (c) there is the potential for irresponsible, unfair and inaccurate reporting from the media and social media to exacerbate the risks [§55]. He concluded that in this case, a real risk arises from naming the judges that would actually infringe their Art 8 rights in a serious way in terms of a guarantee of abuse and threats but extending beyond that into a real (not de minimis and capable of dismissal) risk to their physical safety engaging positive obligations under Article 3 and potentially Article 2 [§88].

c. The Court weighed into the balance the Article 10 rights of the media parties, the principles of open justice, the additional traction that a report may gain with a name, and the importance of accountability and scrutiny of public officials, ultimately concluding that while public accountability is important, the specific risks to the judges' safety and well-being outweighed the benefits of naming them at this juncture.

d. Open justice principles do not automatically override privacy concerns, particularly in "shielded justice" cases [§57]. While "there is a compelling public interest in the media being able to undertake their own consideration of the material and to question or test how we approached the issues and to ask the legitimate question of whether there were things that the system could have done differently or better" [§35], in light of his view that in this case the judge(s) did not improperly perform their functions, this analysis of whether the family justice *system* failed Sara can be done effectively without naming the specific *individual* judge(s). There is a real risk that naming an individual judge, when no other professionals are to be named, risks making them a lightning rod for all negative attention, and risk of abuse and harm. He acknowledged the significant public interest but determined that protecting those involved outweighed the benefit of naming them at this stage [§56].

[1] Specific examples included the experiences of HHJ Simon Oliver and HHJ Carol Atkinson, who were subjected to criminal offenses after being named in public contexts, and which demonstrate "the vulnerability of individuals in the information free for all that the internet constitutes to those who wish to harm them" (§55)

e. This is a provisional decision which will need to be reviewed in 3 months' time, once those who might be identified have be notified and given the opportunity if they wish to make representations, and the Court can receive evidence about the intensity of the reactions that have been generated [§95]. The Court may also take into account any evidence of personal or individual culpability of the relevant individuals that may justify reconsideration of the decision as to anonymity and the public interest in public accountability [§93].

Notice to be given to a third party including a judge whose rights may be infringed by the making of a Reporting Restriction Order

8. The issue of notice to be given to third parties was raised by both the representatives for Mr Sharif and for the Children's Guardian in position statements filed in advance of the hearing. The Children's Guardian's counsel had raised in relation to professionals that "*None of these individuals have been put on notice that they may be named by the press in the context of their roles in historical private family law proceedings concerning SS and the court is invited to consider whether the naming of these individuals is necessary and/or should be permitted before notification to them has been given."* [§23, CG skeleton dated 6.12.24]. On behalf of Mr Sharif: "*He also questions the appropriateness of publishing non party names including professionals from the material without notifying them in advance and giving them an opportunity to making representations about the same prior to the court determining whether their names should be published*." [F PS dated 6.12.24].

9. This principle was endorsed by leading counsel on behalf of Ms Batool in oral submissions in relation to "professionals", that while the decision needed to be made based on specifics, *"we don't know specifics about professionals because as CLKC [Leading Counsel for Mr Sharif] says, they don't know we are here discussing it. The Court can't base decision on generalities, but there may be specifics about any one of these individuals about which you are being asked to endorse publication that we don't yet know of*".

10. Williams J's conclusion is set out at §91 and §92 of his judgment:

> *"I would not name any of those involved without enquiries being made of them as to their health and their response to the possibility of being named" [§91]*
>
> *...*
>
> *"None of the third parties who might be named were given any formal notice of the application and the possibility of their name appearing in headlines along with the likely assertion that they bore some responsibility for her death. Nor would the judges have been aware. No enquiries had been made as to whether anybody who might by default have been named had any vulnerability or other particular Article 8 right which they might wish to put forward in support of a claim for anonymity. In future cases of this nature, it would seem wise to identify these points in advance and to give notice to parties the press wished to name so that they could be notified"* [§92]

11. As a matter of fairness, it must be right that the Court cannot properly conduct a final analysis in terms of risk of harm without specific evidence which cannot be available to the Court without having formally put the previous judges on notice and affording them an opportunity to provide further evidence.

12. In advance of such notice having been given, and evidence having been gathered, the balancing exercise will necessarily be conducted in the first instance upon inferences from such information as is available.

13. The authors of this document have not been able to identify any procedure or guidance in statute, procedure rules, or case law as to notice to be given to a third party whose rights may be infringed upon the making of a Reporting Restriction Order. The existing procedure rules relate only to notice to be given to the press upon an application for a Reporting Restriction Order.

14. Practice Direction 12I provides the procedure rules in respect of applications for a reporting restriction order restricting publication of information about children or incapacitated adults. PD12I 3.1 – 3.4 deal with notice to be given to the press. PD12I

3.1 specifically gives effect to 12(1) Human Rights Act 1998 which requires all practicable steps to be taken to give notice to a person whose right to freedom of expression may be limited by the relief sought. PD12I 3.2-3 explicitly relate to service on the media.

15. This Practice Direction appears to be drafted on the implied basis that the media parties will always be the *Respondents* to the application (and therefore they are the ones who are required to be served); by this logic, it appears presumed that the person whose Article 8 rights will be affected (the person seeking to restrain publication) will be the *applicant* for the RRO and therefore would not require service. We cannot identify any procedure for the reverse situation whereby the *applicant* for the RRO, or order for disclosure/publication, is the media, which is often the case in reality e.g. Tickle v Griffiths [2021] EWHC 3365 (Fam), Tickle v Herefordshire CC [2022] EWHC 1017, and indeed the present case.

16. Sir James Munby P (as he then was) considered the requirements of PD12I in *X (A Child) (Application for Reporting Restrictions: Media Notification*) (No.2) [2016] EWHC 1668 (Fam). In this case, the President was concerned that the Press Association had been given insufficient notice of the application. An order was made in the terms sought (restricting publication) but only on a time-limited basis, so that the matter could come back for a hearing once proper notification had been given to the Press Association.

17. It is respectfully submitted that Williams J was correct to apply the same principle - that those whose ECHR rights may be affected by an RRO (and whose rights will factor into the balancing exercise), which may include professionals and judges, should be served with the application and given an opportunity to make representations prior to final determination of the application.

18. There appears to be some implied application/endorsement of this approach in the following reported cases; however, we have not been able to identify an established procedural guideline:

    a. *Tickle v Herefordshire CC [2022] EWHC 1017* concerned an application by Ms Tickle for disclosure of case documents and to screen an interview of the

mother; and a subsequent cross application by the Local Authority (HCC) for a Reporting Restriction Order in respect of the names of their employees. Lieven J noted in passing at §11 that "Ms Tickle's application was made in a rather informal manner by email and **not copied to HCC or Cafcass**. Given the growing support for transparency within the family justice system and therefore the likelihood of such applications becoming more common, **it is important that journalists who make applications of this nature always copy in the relevant parties** so that matters can be dealt with in as effective and proportionate way as possible." In that case, HCC were given the opportunity to be represented and therefore to make representations on behalf of the social workers prior to determination of the issue. In that case, the representative on behalf of HCC did "not point to any specific threat or risk to social workers if they are named. However, he suggests that they may be subject to adverse comment in their local community." This allowed Lieven J to conduct the requisite balancing exercise and to consider whether any interference in the Art 8 rights of the social workers was justified.

b. In *Derbyshire County Council v Marsden* [2023] EWHC 1892 (Fam) (21 July 2023), upon applications by three media organisations for release of documents relating to care proceedings in respect of Finley Boden, Lieven J considered the issue of whether the press could name the Legal Advisor and Justices who determined Finley Boden's case. It is recorded that HMCTS was represented at "the second hearing" at which the issue as to disclosure was determined (§32). It follows that HMCTS *must have been placed on notice* of the application for disclosure of documents to the press, to include the intention of the press to name the Legal Advisor. It is not clear whether the Magistrates were also put on notice or given the opportunity to be represented. Lieven J's remark at §31 that "no person specific information was put before me concerning either the Lay Magistrates or the Legal Adviser" suggests the Magistrates may also have been given the opportunity to inform the Court of any "person specific information", insofar as it is not clear who else could have been expected to provide the Court with such information other than the justices themselves, but there is no explicit clarification on this point.

c. Similarly in, *Re C (A Child) (Care Proceedings – Publication of Judgment) [2024] EWFC 228 (B),* HHJ Holmes considered publication of its judgment granting the withdrawal of care proceedings. This was opposed by the Local Authority and the Welsh Police force (who were represented). The LA and police force objected to both the naming of the force, and the naming of individual frontline social workers and police officers. HHJ Holmes did order that the LA and police force not be identified (due to risk of jigsaw identification of the child) and that the names of the individual officers and social workers be redacted from the judgment seemingly on the basis of submissions as to risks to their safety. Implied in the fact of the police force's representation at the hearing, there must have been some process of notification of the police force of the potential for publication. There is no information in the judgment as to how the police force came to be represented.

19. In *Re W* [2016] EWCA Civ 1140, this Court considered the extent to which the Article 8 rights of a social worker and police officer were engaged upon a Court's decision to include their names in a judgment in which significant adverse findings were made against them. Macfarlane LJ held at [97]:

> *In the light of the law relating to ECHR Art 8 as I have found it to be, it is clear that the private life rights of SW and PO under Art 8 of these individuals as witnesses would be breached if the judgment, insofar as it makes direct criticism of them, is allowed to stand in the final form as proposed by the judge. The finding of breach of Art 8 does not depend on whether or not the judgment is published; the need to inform employers or prospective employers of such findings applies irrespective of whether the judgment is given wider publication. In short terms, the reasons supporting this conclusion are as follows:*
>
> *a) In principle, the right to respect for private life, as established by Art 8, can extend to the professional lives of SW and PO (R (Wright) v Secretary of State for Health and R (L) v Commissioner of Police for the Metropolis);*
>
> *b) Art 8 private life rights include procedural rights to fair process in addition to the protection of substantive rights (Turek v Slovakia and R (Tabbakh) v Staffordshire and West Midlands Probation Trust);*
>
> *c) The requirement of a fair process under Art 8 is of like manner to, if not on all-fours with, the entitlement to fairness under the common*

law (R (Tabbakh) referring to Lord Mustill in R v Secretary of State for the Home Department, Ex Pte Doody);

d) *At its core, fairness requires the individual who would be affected by a decision to have the right to know of and address the matters that might be held against him before the decision-maker makes his decision (R v Secretary of State for the Home Department, Ex Pte Hickey (No 2));*

e) *On the facts of this case protection under Art 8 does extend to the 'private life' of both SW and PO for the reasons advanced by their respective counsel and which are summarised at paragraphs 61, 86 and 87;*

f) *The process, insofar as it related to the matters of adverse criticism that the judge came to make against SW and PO, was manifestly unfair to a degree which wholly failed to meet the basic requirements of fairness established under Art 8 and/or common law. In short, the case that the judge came to find proved against SW and PO fell entirely outside the issues that were properly before the court in the proceedings and had been fairly litigated during the extensive hearing, the matters of potential adverse criticism had not been mentioned at all during the hearing by any party or by the judge, they had certainly never been 'put' to SW or PO and the judge did not raise them even after the evidence had closed and he was hearing submissions.*

20. It is submitted that similar principles can and should be applied to judges, who, like police officers and social workers continue to have the right to respect for private life. The right to respect for private life, as established by Art 8, can extend to the professional lives of judges, which includes procedural rights to fair process in addition to the protection of substantive rights.

21. The requirement of a fair process under Art 8 is of like manner to, if not on all-fours with, the entitlement to fairness under the common law. The Article 8 rights of the judges, as with the other third parties, fall to be balanced against the competing Article 10 rights and the principle of open justice; the balancing exercise must be conducted in accordance with a process that is fair to the individuals concerned.

22. The skeleton argument filed on behalf of the appellants fails to engage substantively with the point that the judge's decision was in effect an interim decision, to "hold the ring" pending notification to the relevant judges and an opportunity for them to make

submissions/ file evidence/ be represented (save to imply that **CJ/3** should have known that the issue fell for determination as an initial informal disclosure application was made to them in 2023), or indeed the prejudice of letting the publication genie out of the bottle pending due process. The appellants do not appeal or challenge the Court's decision that anonymity be provided for the *other* third party professionals on an interim basis pending a period of evidence gathering and review. If the Court accepts the principle that the question of publication of the names of both judges and other third party professionals ultimately falls to be evaluated by reference to the *Re S* balancing exercise; it is submitted that there should be a clear and equivalent procedure provided for in all such cases.

23. We would respectfully invite this Court to give guidance as to the proper procedure in such cases, which should include:

    a. Notice to be given at the earliest opportunity to any individual whose Article 8 rights may be infringed upon the making of a Reporting Restriction Order or determination in respect of disclosure and/or publication of case documents;

    b. Directions to be given for such individuals to have an opportunity to file a response to the application, including any specific evidence upon which they may wish to rely;

    c. Provision for any such individual who opposes the publication of their name to have the opportunity to be represented at the hearing at which the issue falls to be determined.

<u>The Grounds of Appeal as amended</u>

24. It is submitted that each of the Grounds of Appeal as amended advanced on behalf of the appellants are without merit, and accordingly the appeal should be dismissed. The decision of the judge was well within the ambit of his discretion, and cannot be said to be wrong or procedurally improper. The Court is respectfully invited to uphold the decision of Williams J for the reasons set out in his judgment.

25. The following brief submissions are made in relation to the specific grounds of appeal advanced by the appellants.

Ground (A): *The judge's decision was unjust because of a serious procedural or other irregularity in that the Judge failed to give any reasons, either at the time of making his decision, or following review, to justify the making of an injunctive order (indicating that written reasons would follow in the New Year);*

26. The hearing at which Williams J was to consider the issues of disclosure and publication was initially listed for 2 days to commence on 3 December 2024 to include a full judgment. The Court was jointly approached by the parties with a request to vacate and relist the hearing, on the basis that the verdicts were unlikely to have been received by that date. An alternative listing of ½ day on 9 December 2024 before Williams J on the explicit proviso that "*he will have no time to deliver a judgment before His Lordship goes abroad on 14 December"*.

27. Ms Summers and Ms Tickle did not specifically apply to retain the listing on 3 - 4 December 2024. The email dated 29 November 2024 summarises their position which was essentially lukewarm at best. They left the listing decision to the judge with the knowledge that a judgment would not be forthcoming until early 2025:

...we are concerned whether half a day is sufficient but as you'll have seen from our PS do not agree that the absence of a verdict necessarily precludes the judge from considering the issues. That is for the judge to consider. So - we have no objection to the court being informed of the views of some of the parties that 3rd Dec is too soon. However we would want it explicitly noted in any communication by you to the court, that as set out in our PS, we are open to a listing on 3rd if the judge feels that is appropriate, and bearing in mind the update he has had re the ETA on verdicts, and noting, as he did, that the verdicts may still not be received by 9 December.

28. Further, no objection to this course of action was raised at the hearing itself, at which it was plain that, submissions having continued until after 4.30pm, his Lordship was going to be unable to deliver a substantive judgment. It was in recognition of the advantage to the media parties' of receiving at minimum a *decision* – to enable the

prompt publication of the extensive matters in respect of which permission *was* granted – that His Lordship gave the parties his decisions; on the explicit proviso that the full judgment would have to follow in the New Year.

29. The decision of His Lordship cannot be said to have been invalidated by his setting a timetable for hearing submissions and delivering judgment which was not opposed by any party. In the event, this Ground has been overtaken by the provision by His Lordship of his judgment in draft on 18 December 2024, and the final judgment being handed down on 19 December 2024.

30. The appellants' amended skeleton relies upon a detailed analysis of the reasons given in the written judgment dated 19 December 2024. Either there were not reasons – Ground (a) – or the reasons were wrong - Grounds (b) – (e). The appellants cannot have it both ways.

GROUND (B): *the Judge's decision was unjust because of a serious procedural or other irregularity in that the Judge adopted an approach to the media generally, and the appellants specifically, which (i) was unfair, (ii) demonstrated bias and/or inappropriate personal animus, and (iii) represented an unacceptable judicial encroachment upon the Article 10 ECHR rights of the appellants and/or the media, and further the Judge sought to rely upon his erroneous analysis regarding purported media irresponsibility in justifying the order restraining the naming of Judges in the historic proceedings*

31. It is well-established that it is not for the Court to seek to exercise editorial control; once the genie of publication is out of the bottle, there is no role for the Court in dictating what use is made of the information within the establishment media and beyond on social media.

32. The other side of this coin is that it must be recognised that the quality of reporting amongst formal and social media will in reality be wide-ranging – from fair, accurate and responsible reporting at one end of the spectrum, to sensationalist reporting with the aim of stoking anger, fear, hatred and violence at the other, encompassing all stops in between. This is a fact in respect of which His Lordship was entitled to take

judicial notice. In support of this observation, he was entitled to record the misreporting by the appellant media parties in this case to date.

33. The concerns of Williams J in respect of the reporting by the appellant media parties in respect of these proceedings are shared by Mr Sharif, insofar as it has also extended to the reporting of his own position. There has been inaccurate and misleading reporting by the appellant media parties in these proceedings in respect of (a) Williams J's decision to adjourn the application for permission to appeal; and (b) Mr Sharif's position on the application for permission to appeal to this Court. This is set out at Annex 1 of this document.

34. The appellants criticise His Lordship for "*describing a submission made on behalf of the other media parties in relation to the exceptionally high public interest in being able to name the Judges in the historic proceedings as "extraordinary" and "risible". [§64]"*. This is unfortunately also misleading; the submission described as *"extraordinary"* and *"risible"* was not that the public interest in naming the Judge was "exceptionally high" but that it was "equal to" that in naming Mr Sharif and Ms Batool.

35. It is respectfully submitted that the obiter comments of the judge recording the inaccurate reporting by the appellant parties do not indicate bias or "personal animus"; to the contrary, they reflected the reality as it was playing out in the press and within proceedings.

36. Further, the fundamental reasoning of the judge in conducting the requisite balancing exercise cannot be said to have been affected by the obiter observations made in respect of the press.

GROUND (C): *The Judge's decision was wrong, in that the demands of the Open Justice principle mean anonymity for a Judge cannot be justified within the framework of balancing Article 8 and Article 10;*

37. The appellant parties substantively criticise His Lordship's analysis of the jurisprudence in respect of the application of the open justice principle to family

proceedings. William's J's analysis of the open justice principle and its application to family proceedings was clearly set out in his June judgment at §§75-85 following a hearing at which the appellants were represented by the same counsel. That analysis is respectfully endorsed. Should the appellants have taken issue with the reasoning in that judgment it was open to them to appeal; or to make submissions on the issue at the instant hearing. They did neither.

38. Under its inherent jurisdiction, the Court may either relax or add to the "automatic restraints" prescribed by statute. In any case in which this jurisdiction is engaged, the required balancing exercise is as summarised at paragraph 22 of *Re J (A Child)* [2013] EWHC 2694 (Fam):

> *"The court has power both to relax and to add to the 'automatic restraints.' In exercising this jurisdiction the court must conduct the 'balancing exercise' described in In re S (Identification: Restrictions on Publication) [2004] UKHL 47, [2005] 1 AC 593, [2005] 1 FLR 591, and in A Local Authority v W, L, W, T and R (by the Children's Guardian) [2005] EWHC 1564 (Fam), [2006] 1 FLR 1. This necessitates what Lord Steyn in Re S, para [17], called "an intense focus on the comparative importance of the specific rights being claimed in the individual case". There are, typically, a number of competing interests engaged, protected by Articles 6, 8 and 10 of the Convention.*
>
> *I incorporate in this judgment, without further elaboration or quotation, the analyses which I set out in Re B (A Child) (Disclosure) [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at para [93], and in Re Webster; Norfolk County Council v Webster and Others [2006] EWHC 2733 (Fam), [2007] 1 FLR 1146, at para [80]. As Lord Steyn pointed out in Re S, para [25], it is "necessary to measure the nature of the impact ... on the child" of what is in prospect.*
>
> *Indeed, the interests of the child, although not paramount, must be a primary consideration, that is, they must be considered first though they can, of course, be outweighed by the cumulative effect of other considerations: ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4, [2011] 2 AC 166, para [33]."*

39. The appellant parties seek to argue that the *Re S* balancing exercise does not apply to the naming of judges – "*The naming of a Judge, a public office holder, is a cornerstone of Open Justice. To that extent, the withholding of the name of a Judge cannot be justified by reference to the conventional Article 8/10 balancing exercise"*

[§45 skeleton] and indeed that to the extent that Williams J considered that he was required to conduct this balancing exercise, this amounted to a "misdirection" [§39 skeleton]. This is a submission unsupported by the cited authorities.

40. The appellants rely upon the dicta and reasoning of Lieven J in *Derbyshire v Marsden* [2023] EWHC 1892 (Fam). In that case the naming of the Magistrates was not a contested issue. The naming of the Legal Advisor was opposed by HMCTS. In setting out her decision granting the press leave to publish the names of the Justices and the Legal Advisor, Lieven J referred to the fact that "*no person specific information was put before me concerning either the Lay Magistrates or the Legal Adviser which would impact on the balance to be struck here*". It follows that should such person specific circumstances have been put before her, these would have needed to be weighed into the "balance to be struck here". The "balance" referred to can be no other than the balancing exercise described in *Re S (Identification: Restrictions on Publication) [2004] UKHL 47* requiring *"an intense focus on the comparative importance of the specific rights being claimed in the individual case"*.

41. The judge did not err in his statement of principle that the required exercise was the balancing exercise of the competing ECHR rights, in respect of which he set out that "*For the judiciary I would accept that there is an assumption in shielded justice cases of naming because s.12 Administration of Justice Act 1960 contemplates that their name will be open notwithstanding the presence of the broader shield*" [§61], but that "*these starting points must always be subject to a case specific evaluation which will involve consideration of elements relating to the case itself, the individuals and what it is legitimate to infer from the accumulation of knowledge we have about risks arising*" [§62].

GROUND (D): *The Judge's decision was wrong, in that the Judge is not capable of justifying the order as it was made in the absence of any specific application and/or evidential foundation;*

42. The Judge's decision was in effect, to adjourn the issue of naming judges and other third parties to allow for an opportunity for these individuals to put before the Court any specific application or relevant evidence which would be relevant to the Court's ultimate determination.

43. In a case where the relevant individuals have not yet had notice of the issue being listed for determination, the appellants seek to establish in this Ground that His Lordship was "*wrong*" to in effect, "*hold the ring*" pending that due process, on the basis of an interim risk assessment. It cannot be right that in a case where the Court considers an issue should be adjourned for notice to be provided to a relevant individual, to make an order preventing publication on an interim basis would be wrong in law on the basis that the evidence that may be received following notice is not yet before the Court. Such a submission is unsupportable.

44. The evidential foundation of the interim risk assessment is set out at paragraphs 75-83 of His Lordship's judgment, with the evaluation of how this feeds into the balancing exercise set out at paragraphs 85-89.

45. His Lordship noted that the Court of Appeal in *Abassi v Newcastle upon Tyne Hospitals NHS Foundation Trust* [2023] EWCA Civ 331 considered that while interference with Article 10 rights based on generic concerns about the impact on recruitment of clinicians or morale were said not to be relevant to the evaluation, but that generic concerns about the impact on individuals arising from the 'firestorm' associated with end of life cases were relevant [§28].

46. In conducting the interim risk assessment, Williams J was entitled to take judicial notice of the extraordinary level of media attention in this case, and the media and social media landscape surrounding this case. By 19 December 2024, on which date Williams J's judgment was handed down, and following media articles by the appellant parties relating to his decision to restrain publication of the judges' names, there were already significant threats being made in respect of the judges on X (formerly Twitter) and other media platforms, including calls for the judges to be "strung up", "shot at dawn" and to be hanged "from a lamppost" (see Annex 2).

47. The appellants consider it "notable" that an initial informal disclosure application was made to **CJ/3** by email in 2023. Insofar as it is suggested that this Court or the lower court can make such an inference, it cannot be properly inferred that **CJ/3** was aware that on 9 December 2024 a High Court Judge was considering whether to permit

publication of their name such that they could have prepared an application to restrain such publication should they have wished to. No formal or informal notice of the hearing on 9 December 2024 was given to the judges in the historic proceedings, or indeed any of the other third parties proposed to be named (albeit representations were made on behalf of the social workers by counsel for the Local Authority).

GROUND (E): *The Judge's decision was wrong in that the order made is inimical to the proper administration of justice.*

48. This Ground is essentially based on repeat submissions made in respect of the other grounds and we have addressed and responded already to the arguments above. We will respond if necessary and if permitted once any oral submissions are made in respect of this Ground.

CYRUS LARIZADEH KC
CLARISSA WIGODER

Pro Bono Counsel for the 12th Respondent Father, Urfan Sharif

9 January 2025

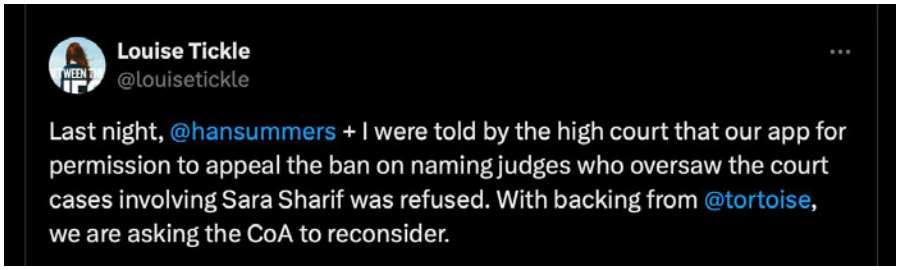
Annex 1: Misreporting by the media parties in relation to these proceedings

Williams J's decision to adjourn the application for permission to appeal; misreported as a decision to "refuse" the application:

1. On Friday 13 December 2024, Williams J was sent by Mr Barnes on behalf of the appellants an email containing an application for permission to appeal. The learned judge responded to the application that same evening adjourning the application for permission to appeal until after his judgment.

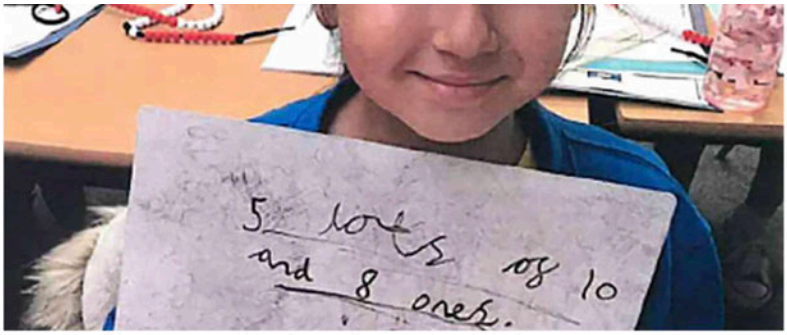
2. On Saturday 14 December 2024, the appellants provided the public with an inaccurate account of Williams J's decision – they wrote that permission to appeal had been refused, in both a post on X[2], and an article in the Guardian.

   Louise Tickle on X:



   Louise Tickle and Hannah Summers in the Guardian:

[2] https://x.com/louisetickle/status/1868026503084032317



Sara Sharif had been the subject of three family court cases before she was murdered. Photograph: Surrey Police/AFP/Getty Images

The high court judge who banned the media from reporting the names of the fellow judges who oversaw three sets of family court proceedings relating to the murdered schoolgirl Sara Sharif, on Friday night refused permission to appeal against his decision.

3. It was only after this inaccuracy was brought to the attention of this Court through the PD52C response filed on behalf of Mr Sharif on 18.12.24 that the article was amended to read as follows[3]:

> *"The high court judge who banned the media from reporting the names of the fellow judges who oversaw three sets of family court proceedings relating to the murdered schoolgirl Sara Sharif, on Friday night failed to give permission to appeal against his decision.*
>
> *The reporting restriction protecting judges' identities that was made by Mr Justice Williams on Monday is thought to be unprecedented in relation to family court proceedings.*
>
> *Two reporters who specialise in reporting on the family justice system – the authors of this piece – lodged the first press application in September 2023 for court documents relating to child protection concerns for Sara Sharif. Backed by Tortoise Media, they will now pursue their application for permission to appeal to the court of appeal after the current judge upheld his decision to anonymise the previous judges and then adjourned determination of a permission to appeal request until delivery of his written reasons."*

Misreporting of Mr Sharif's position in respect of the application to the Court of Appeal for permission to appeal on 16 January 2024

4. The PD52C response to the application for permission to appeal filed on behalf Mr Sharif, filed and served on Wednesday 18 December 2024 (before receipt of Williams J's draft judgment later that evening), set out Mr Sharif's position as follows:

> *"On behalf of Mr Urfan Sharif we submit that the application for permission made by Ms Tickle and Ms Summers is premature and should remain adjourned to await the judgment of Mr Justice Williams which is due in*

[3] https://www.theguardian.com/law/2024/dec/14/moves-to-appeal-after-court-upholds-ban-on-naming-judges-who-presided-over-sara-sharif-hearings

> *January 2025 … On 17 December 2024 Mr Sharif was sentenced to life with a minimum term of 40 years. We are not in contact with him this week due to his being produced at the Old Bailey and it has not been possible to take further instructions from him at this stage. We will of course consider the judgment of Williams J in due course and review any application for permission in light of that judgment and obtain instructions on the same.*"

5. No substantive position on the appeal had at that time been expressed on Mr Sharif's behalf, save to submit that *the application for permission* should be adjourned until after receipt of full judgment and reasoning of Mr Justice Williams. At the time of filing, the draft judgment of Williams J had not yet been received.

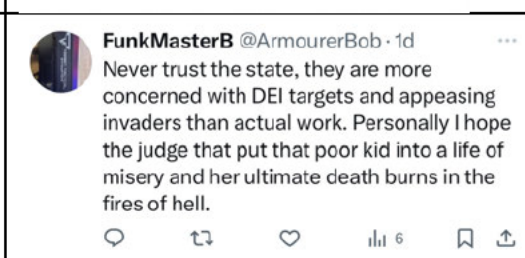
6. On Friday 20 December 2024, the appellant Louise Tickle posted an article on Tortoise Media's website[4], inaccurately reporting Mr Sharif's position as follows:

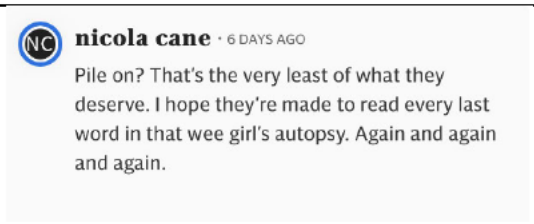
> The journalists' challenge to the anonymity granted to judges is backed by all other media parties to the original application for disclosure and publication of child protection documentation relating to Sara Sharif.
>
> Surrey County Council, whose social workers were involved in all three sets of family law proceedings prior to the child's death, has taken no position on the appeal, but does not resist it. Urfan Sharif, Sara's father, and Beinash Batool, her stepmother, both oppose the appeal. The court-appointed Guardian for Sara's siblings has asked for more time to develop a position. Sara's mother, Olga Domin, has not engaged with the appeal.

7. Mr Sharif had not at that time expressed a substantive position on the appeal; the reporting was not fair, responsible or accurate.

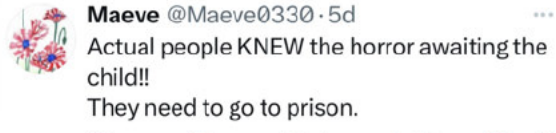
[4] https://www.tortoisemedia.com/2024/12/20/top-judge-approves-appeal-against-anonymity-in-sharif-case?utm_campaign=388204_DailySensemaker_241220&utm_medium=email&utm_source=dotdigital&UID=PNIMSWYZspijovx&dm_i=7EQK,8BJG,SKPTJ,110CB,1

Annex 2: Threats to the judges on social media as at 19 December 2024

CALLS FOR SPECIFIC VIOLENCE/HARM	
"Let's go. All 4 of them, into the crusher. Slowest speed." [moving image of a metal crusher]	
"Many of the judges in the U.K deserve to hang."	
"I hope that judge never has another night's sleep for the rest of his/her miserable life. And they remember this little girl as they celebrate their Christmas"	
"Social workers DO NOT make those decisions. They come from senior management; by all means hang all those fuckers!"	
"Never trust the state, they are more concerned with DEI targets and appeasing invaders than actual work. Personally I hope the judge that put that poor kid into a life of misery and her ultimate death burns in the fires of hell"	
"At this point you could hang every british judge and prosecutor from a lamp post and be right to do so. Irredeemable."	
"They need being shot ag dawn "pour encourager les autres…" Les Hismore [Telegraph comments section]	

"Pile on? That's the very least of what they deserve. I hope they're made to read every last word in that wee girl's autopsy. Again and again and again." nicola cane [Telegraph comments section]	
"God only knows what that child went through but that Judge & all concerned should be taken to task" @tommytaylo6281 "27 fractures alone! I cant even imagine the pain that little girl went through They should all be strung up I hope they cop it in prison!" @Sassy191919 "They'd be gone in a heartbeat if I had my way" @tommytaylo6281 "Ditto Tommy" @Sassy191919	
COMMENTS SPECULATING ON RACE/RELIGION/BACKGROUND OF JUDGE	
"I presume that judge is white so he would be scared sh!tless to rule against a Muslim..?"	
"What was the nationality of the judge I wonder?"	
"Sharia courts always give custody to the father. Was the judge in this case a muslim?"	
"We seem exceedingly poor at vetting our judges. The list of appalling decisions gets longer and longer. I suspect they are mostly from upper middle class backgrounds with limited experience of the real world. This should change"	

"So the judge is either a person in the public eye, or a Muslim"	
"Would not surprise me to learn the Judge in this case, was a Muslim"	
"Disgusting. There is a historical precedence for what the British judiciary is doing. Hitler's henchmen also wore black, sent children to their deaths, and colluded to keep the truth from the public"	
CALLS FOR THE JUDGE TO BE STRUCK OFF/ ARRESTED/ PROSECUTED	
"Not just named. Arrested and charged"	
"The "Judge" and the Cafcass workers involved all need to be struck off"	
"This judge needs to be identified, fired AND prosecuted"	
"Should be arrested"	
"Identified! Should be struck off"	
"Identified and removed"	
"and struck off"	

"All should be named & shamed & sacked. We get fed up with the platitudes "lessons will be learnt" I wonder how much "cultural sensitivity played into the decision making of the agencies not to pursue the case before, just like in Rotherham"	
"That judge should be on trial for child endangerment"	
"Each and every one of them should be in the dock answering for their judgements"	
"They used to throw the social worker to the dogs forthings like this. Whats happenined?" [sic]	
"So how are we going to ensure there is accountability? Some of these people are in very well paid jobs. Some end up in the House of Lords. A child ends up tortured and dead. Decisions have consequences and careers should be over"	
"Actual people KNEW the horror awaiting the child!! They need to go to prison"	
"He should be charged with manslaughter"	
CALLS FOR IDENTITY TO BE LEAKED	
"This is when a leak would be heroic"